

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FILED  
NOV 18 2004

  
Clerk

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JERRY W. BENDER,

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CIV 01-4151

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Plaintiff,

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vs.

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DONEEN HOLLINGSWORTH, South Dakota Secretary of State, in her individual and official capacities; JEFFREY BLOOMBERG, Secretary, Department of Corrections, in his individual and official capacities; DOUGLAS L. WEBER, Warden, South Dakota State Penitentiary, in his individual and official capacities; OWEN SPURRELL, Associate Warden, South Dakota State Penitentiary, in his individual and official capacities; ROBERT DOOLEY, Warden, Mike Durfee State Prison, in his official capacity; EUGENE REGIER, M.D., in his individual and official capacities; SIOUX VALLEY HOSPITAL; KELLY PICKNER, Officer, Mike Durfee State Prison, in her individual capacity; TAMMY DOYLE, Officer, Mike Durfee State Prison, in her individual capacity; DOUG WYNIA, Counselor, Mike Durfee State Prison, in his individual capacity; BOB KURLY, Counselor, Mike Durfee State Prison, in his individual capacity; KAY WILKA, Nursing Director, in her individual capacity; KEVAN MERVERN, Case Manager, Mike Durfee State Prison, in his individual capacity; DARYL SLYKHUIS, Assistant Warden, Mike Durfee State Prison, in his individual

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JUDGMENT

capacity; TROY PONTO, Unit Manager, Mike Durfee State Prison, in his individual capacity; and AMY BIRTHALSON, Unit Manager, Mike Durfee State Prison, in her individual capacity; GREG ZIKES, Physician's Assistant, in his individual and official capacities; KAY PAA, Nurse, in her individual and official capacities; RHONDA MILLER, Nurse, in her individual and official capacities; and OTHER UNKNOWN STATE PERSONNEL, in their individual and official capacities,

### Defendants.

In accordance with the Court's Memorandum Opinion and Order, Doc. 89, dated September 29, 2003, and with the Eighth Circuit Court of Appeals' decision in *Bender v. Regier*, Slip Op. No. 03-3529 (8<sup>th</sup> Cir. October 1, 2004) and the mandate filed November 17, 2004, reversing paragraph three of the Court's Memorandum Opinion and Order, Doc. 89,

IT IS ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of all Defendants and against Plaintiff, Jerry Bender, on all of the claims in Plaintiff's Complaint. 1

Dated this 10 day of November, 2004.

BY THE COURT:

Lawrence L. Piersol  
Chief Judge

ATTEST:

JOSEPH HAAS, CLERK

BY: Shelly Margulies  
(DEPUTY)